***THE HON'BLE SRI JUSTICE N.V. RAMANA**

+Writ Petition Nos. 13299 and 13958 of 2007

% Dated: 30.10.2007

W.P. No. 13299 of 2007

Sushil Kumar Jain, S/o late J.D. Jain,
aged 53 years, R/o 302, Zamarud Residency,
Door No.6-3-901/1, Somajiguda, Hyderabad.

..... PETITIONER

VERSUS

$ Anand Mohan, Executive Director (Southern Region Transmission System-I),
Power Grid Corporation of India Limited
(A Govt. of India Enterprise),
M.C.H. Complex, R.P. Road,
Secunderabad and another.

.....RESPONDENTS

! Counsel for the Petitioner: Sri D.V. Sitharam Murthy

^ Counsel for Respondents: Sri Vedula Venkata Ramana (Standing Counsel)

< GIST:

> HEAD NOTE:

? Cases referred:

1. AIR 2001 SC 343
2. 2005 (4) SLR 754
3. (2007) 2 SCC (L & S) 304
4. (1996) 1 SCC 327 = JT (1995) 8 SC 331
5. (2004) 3 SCC 440 = 2004 SCC (Cri) 826 = AIR 2004 SC 1467

6. (2001) 10 SCC 639
7. (1987) 2 SCC 179 = (1987) 3 ATC 319 = AIR 1987 SC 943

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. Nos. 13299 and 13958 of 2007

Common order:

The petitioner, who is working as Chief Manager (Law) with the respondents-Power Grid Corporation of India Limited (hereinafter referred to as 'the Corporation') has filed these two writ petitions.

In W.P. No. 13299 of 2007, the petitioner has questioned the order dated 16.04.2007, passed by the 1st respondent-Executive Director, placing him under suspension, pending enquiry into the charges framed against him, as illegal and arbitrary, or in the alternative to direct the 2nd respondent-Chairman-cum-Managing Director to appoint any other Executive Director of any region as disciplinary authority.

This Court, vide order dated 28.06.2007, while admitting the writ petition, passed interim orders in W.P.M.P. No. 16660 of 2007, suspending the order of suspension.

While the above writ petition is pending before the Court, the petitioner filed W.P. No. 13958 of 2007 assailing the order dated 25.06.2007, passed by the 1st respondent-Executive Director, appointing one Sri. Inder Singh as Enquiry Officer, as illegal and arbitrary, and consequently to direct the 2nd respondent-Chairman-cum-Managing Director, to appoint any other Executive Director of the Corporation as disciplinary authority in the place of Sri. Anand Mohan.

The learned counsel for the petitioner submitted that the allegations of lack of devotion to duty and insubordination set out in the annexure to the order of suspension and charge memo charge dated 16.04.2007 do not constitute misconduct under the Powergrid Conduct, Discipline and Appeal Rules (hereinafter referred to as 'the PCDA Rules'). He submitted that as per IOM dated 06.01.1995, issued by the 2nd respondent-Chairman-cum-Managing Director, wherein the reporting relationship of the Regional Law Officer is stated, the petitioner, being the Chief Manager (Law) and Head of the Legal Cell, has to report to the Head of the Region concerned, and therefore, his refusal to report to the

Deputy General Manager (HR), who is the Head of the Human Resources Department, as directed by the 1st respondent-Executive Director, vide office order dated 10.06.2006, cannot be treated as a misconduct under the PCDA Rules, warranting his placing under suspension and initiation of enquiry.

He submitted that though the petitioner made representations to the authorities in succession stage-wise bringing to their notice that as per the IOM dated 06.01.1995, issued by the 2nd respondent-Chairman-cum-Managing Director, he has to report to the Head of the Region concerned and not to the Head of the Human Resources Department, but no action thereon had been taken, and on the other hand, the 1st respondent-Executive Director, charging that the acts of the petitioner amounted to insubordination etc., placed him under suspension pending enquiry into the charges, which is illegal and arbitrary.

He submitted that the second charge memo dated 25.06.2007, issued by the 1st respondent framing two charges is also illegal and arbitrary. The first articles of charge framed in the second charge memo dated 25.06.2007, is already subject-matter of the first charge memo dated 16.04.2007, and it has been framed once again. The second charge in the charge memo dated 25.06.2007, relating to theft of official documents (705 in number) alleged to have been seized by the security officials from the petitioner on 17.04.2007, is concerned, he submitted that the petitioner after being placed under suspension, handed over all the documents to his superior officer, and as such, there was no occasion for him to thieve the documents. He submitted that the charge of theft framed against the petitioner is nothing but an attempt by the 1st respondent-Executive Director to implicate the petitioner in false criminal case, and this is evident from the fact that though the official documents are alleged to have been seized from the petitioner on 17.04.2007, the charge relating to theft of official documents was framed against him after lapse of 40 days.

He submitted that the charges framed against the petitioner in the charge memos, are the result of his bringing to the notice of the higher ups and highlighting about the non-cooperative attitude exhibited by the Deputy General Manager (HR) and other officers, in matters relating to drafting of affidavits and counters (involving crores of rupees) for filing in the cases pending before various Courts. The 1st respondent-Executive Director, at the instance of the officers, bore grudge and developed bias

and malice against the petitioner, and framed the impugned charges and placed him under suspension, and the fact that the officers are biased against the petitioner is evident from the fact that none of the affidavits and counters prepared by the petitioner were approved/vetted by the Deputy General Manager (HR) and other officers, and on the other hand, they made pungent remarks, which in fact, are humiliating. He submitted that since the charges leveled against the petitioner are the result of bias and malice nurtured against him by the 1st respondent-Executive Director and other superior officers, the same cannot be sustained, and in support of this argument, he placed reliance on the judgment of the apex Court in **State of Punjab v. V.K. Khanna**[1]. Hence, he prayed that the order of suspension as well as the charge memos issued by the

1st respondent-Executive Director, be quashed and the writ petitions be allowed.

The respondents filed counters in both the writ petitions. Reiterating the averments made by the respondents in the counters, the learned Senior Counsel submitted that as per the IOM dated 06.01.1995 only the Head of the Law Department shall have functional reporting with GM (Law & Arbitration)/CC, and since the petitioner was neither designated as Head of the Law Department nor worked as such, he cannot contend that as per IOM dated 06.01.1995, he has to report only to the Head of the Region concerned. He submitted that vide IOM dated 08.05.2005, the Personnel Officer has informed the petitioner that the Law Section shall continue to be under the control of AGM(HR)/HOP, and he having reported to the AGM(HR)/HOP accordingly till he raised the dispute, cannot now contend that he would report only to the

1st respondent. He submitted that the DGM(HR) was given additional charge of Law also. He submitted that though the representations made by the petitioner do not fall within the grievance procedure, yet the petitioner vide letter dated 14.02.2007 was replied, and as such, he cannot say that his representations remained unanswered. He denied the allegations made by the petitioner that derogatory remarks were passed against him and that his superior officers exhibited a non-cooperative attitude towards him at any point of time with reference to legal matters and his functions. He submitted that the petitioner is in the habit of making complaints against the reporting officers, and in fact, he was advised more than once to desist from making such complaints, but the petitioner continued with his endeavour of making complaints

against his reporting officers. He submitted that the petitioner is in the habit of threatening his superiors with legal and criminal action. He submitted that since the acts of the petitioner created an atmosphere of indiscipline, the

1st respondent-Executive Director, framed the charges in relation to lack of devotion to duty and insubordination, and placed him under suspension pending enquiry into the charges, and no interference is called for therewith.

He submitted that upon service of the order of suspension and charge memo dated 16.04.2007, the petitioner was asked to surrender his photo identity card and hand over the record, but the petitioner instead of handing over the entire records, had taken some of the copies of the record and was caught red handed by the security personnel on 17.04.2007 while he was trying to take them out in his car, and the said documents were seized under a panchanama, and since the removal of the office record (containing approvals and copies of important circulars etc.) out of the office premises without approval of the competent authority was violative of Rule 20.0 of the PCDA Rules, it was decided to frame a charge on that count, and accordingly, another charge memo dated 22.05.2007 framing two charges, was issued. In fact, the petitioner admitted that he had taken some copies in the explanation submitted by him to the charges. He denied the stand taken by the petitioner that the 1st respondent-Executive Director is biased towards the petitioner and is acting *mala fide*, contending that the petitioner had addressed a personal letter dated 03.05.2007 to the 1st respondent-Executive Director, a reading of which discloses that there is no element of bias or malice being nurtured by the 1st respondent-Executive Director against the petitioner. He submitted that since the disciplinary authority has already appointed an enquiry officer to enquire into the charges leveled against the petitioner, it is not proper for this Court to interfere with the enquiry, and in support of his argument that no writ petition would lie for quashing of a show cause notice or a charge sheet, placed reliance on a judgment of the Division Bench of the Madras High Court in **N. Kailasam v. The Bar Council of India**[2] and of the apex Court in **Union of India v. Kunisetty Satyanarayana**[3]. He, hence prayed that the writ petitions be dismissed.

Heard the learned counsel for the petitioner and the learned Senior Counsel for the respondents-Power Grid Corporation of India

Limited and perused the material placed on record.

The petitioner, admittedly, is seeking quashing of the charge memos, issued to him by the respondent-Corporation, alleging certain acts of misconduct - In the charge memo dated 16.04.2007, issued by the respondent-Corporation, which is assailed in
W.P. No. 13299 of 2007, the petitioner is alleged to have committed the following acts of misconduct under the PCDA Rules:

On the count of Article-I:

(a) He has failed to maintain devotion to duty and acted in a manner unbecoming of an executive of the Corporation, which is violative of Rule 4(1)(ii) and (iii);
(b) He acted in a manner prejudicial to the interests of the Company, which constitutes misconduct vide Rule 5(5);
(c) He indulged in willful insubordination to the lawful and reasonable orders of his superiors, which constitutes misconduct vide Rule 5(6);
(d) He committed acts subversive of discipline and good behaviour, which constitutes misconduct vide Rule 5(20);
(e) He indulged in making unwarranted and uncalled for remarks against Shri V. Hariharan, DGM (HR)/Law, who is his superior and in-charge of Law Section, which constitutes misconduct vide Rule 5(22); and
(f) He failed to comply with the Company's expressed instructions, which constitutes misconduct vide Rule 5(25).

On Count of Article-II:

(a) He has failed to maintain devotion to duty which is violative of Rule 4(1) (ii); and
(b) He has shown negligence in performance of his duty, which constitutes misconduct under Rule 5(9).

Likewise, in the charge memo dated 22.05.2007, issued by the respondent-Corporation, which is assailed in W.P. No. 13958 of 2007, the petitioner is alleged to have committed the following acts of misconduct under the PCDA Rules:

On Count of Article-I:

(a) He has acted in a manner unbecoming of an Executive of the Corporation, which is in violation of Rule 4(1)(iii);
(b) He committed acts subversive of discipline and good behaviour, which constitutes misconduct vide 5(20);
(c) He indulged in making false allegations against his superiors, viz., Shri S.K. Datta, GM (Projects), Shri B.M. Gupta, AGM(HR) and Shri V. Hariharan, DGM(HR)/Law, which constitutes misconduct vide Rule 5(22).

On Count of Article-II:

(a) He has failed to maintain absolute integrity, and acted in a manner unbecoming of an Executive of the Corporation, which is in violation of Rule 4(1)(i) & (iii);
(b) He has committed theft of property of the Company, which constitute

misconduct vide Rule 5(1)(a);

(c) He has acted in a manner prejudicial to the interests of Powergrid, which constitutes misconduct vide Rule 5(5);

(d) He committed acts subversive of discipline and good behaviour, which constitutes misconduct vide Rule 5(2);

(e) He has violated the Company's Rules/Express Instructions, which constitutes misconduct vide Rule 5(24); and

(f) He has indulged in breach of Rule 20(1) of Powergrid Service rules, which constitutes misconduct vide Rule 5(27).

The law is well settled that no writ would lie against a charge-sheet or show cause notice, unless it is shown that charge sheet or show cause notice, issued is without jurisdiction or for some other reason, it is wholly illegal. The apex Court in **Union of India v. Kunisetty Satyanarayana**, following its earlier decisions **Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh**[4], **Special Director v. Mohd. Ghulam Ghouse**[5], **Ulagappa v. Divisional Commr., Mysore**[6] and **State of U.P. v. Brahm Datt Sharma**[7], held as follows:

> The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.
>
> Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show cause notice or charge sheet.
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> No doubt, in some very rare and exceptional cases the High Court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High court should not interfere in such a matter.

It is not the case of the petitioner that the 1st respondent-Executive Director, who issued the impugned order of suspension and charge memos, has no jurisdiction to issue. However, it is his contention that the impugned order of suspension and charge memos are the result of bias and malice nurtured towards him by his superiors because he protested against their illegal acts, which were detrimental to the interests of the Corporation, and therefore, this Court has the power to interfere and quash the impugned charge memos. Whether

the impugned suspension order and the charge memos issued to the petitioner, are the result of bias and malice, as contended by the petitioner, warranting interference by this Court in exercise of Article 226 of the Constitution, may be examined in the light of the facts and circumstances as appearing in the case.

The petitioner, who is the Chief Manager (Legal), it appears from the material placed before the Court, and as is evident from the dispute raised by him, has been asked to report to the Deputy General Manager (HR). However, having regard to the letter 06.01.1995 of the 2nd respondent-Chairman and Managing Director, the petitioner contends that he being the Chief Manager (Legal) and Head of the Legal Department, is required to report only to the 1st respondent-Executive Director and not to any authority below his rank. Aggrieved by action of the respondents in directing him to report to the Deputy General Manager (HR), the petitioner raised grievance stage-wise to the superior authorities on 06.04.2006, 20.10.2006 and 10.11.2006, contending that as per IOM dated 06.01.1995, issued by the 2nd respondent, he is required to report to the 1st respondent-Executive Director, and as such, he cannot be asked to report to an authority lower in rank, namely the Deputy General Manager (HR), and more particularly, when he is not a person qualified in Law.

Though the petitioner contends that he is the Head of the Legal Department, the same is disputed by the respondents contending that the petitioner neither functioned as Head of the Legal Department nor was he designated as Head of the Legal Department, and as such, it is not open for him to contend that as per IOM dated 06.01.1995 issued by the 2nd respondent, he is required to report only to the 1st respondent-Executive Director and not any officer inferior to him. In fact, it is the case of the respondents that the despite the petitioner being informed that as per IOM dated 08.05.2006, the Law Section shall continue to be under the control of AGM(HR)/HOP SRTS-I, yet he continued to raise grievances, and in fact, refused to report to the Deputy General Manager (HR), who has been re-designated as Deputy General Manager (Law & HR), and that it is the prerogative of the Regional Head to entrust the work to any of the officers working under his control, keeping in view the interest of the Corporation. The

1st respondent-Corporation denied the contention of the petitioner that the Deputy General Manager (Law & HR), is not a Law graduate, and

contended that the Deputy General Manager
(Law & HR), holds a post-graduate degree in Law and that before his taking charge at Hyderabad as such, he had handled legal matters in various regions and defended the interest of the Corporation in various Courts.

As the petitioner, despite being communicated the decision of his reporting to the Deputy General Manager (Law and HR), is alleged to have continued with his correspondence against his superiors and refused to obey the said orders, the 1st respondent-Executive Director, placed the petitioner under suspension pending enquiry into the charges framed against him.

The petitioner contends that the Deputy General Manager (Law & HR) was not co-operative, and in fact, he had made castigating remarks with regard to the affidavits and counter-affidavits prepared by him for filing before various Courts, without even considering his vast experience in the legal field. May be the petitioner has vast experience in the legal field and the officer to whom, he is asked to report may be, is less qualified or is having less experience than the petitioner, but in an administrative hierarchy, qualifications do not matter, the subordinate officer is always expected and required to respect the superior officer. In an administrative hierarchal set up, it is common knowledge that the reporting officers while dealing with the files relating to various matters placed before them, make remarks or comments on the note files, and such, comments, at any rate cannot be taken as having been made personally to his subordinate. Such comments or remarks, are normally made, if the reporting officer is not satisfied with the work done by his subordinate, and if the subordinate officer feels that he was right, and that such remarks were uncalled for, then he can put forth the same before the authorities concerned in a manner provided in their administrative set up. But merely because the reporting officer has made some remarks against the petitioner while dealing with the files relating to the Department, it cannot be said that he has developed bias and malice towards him, and that the impugned suspension and charge memos issued by the 1st respondent-Executive Director, are the result of such bias and malice, nurtured towards him by superiors, and more so when the petitioner is said to have addressed a personal and friendly letter dated 03.05.2007 to the 1st respondent-Executive Director, complaining about his superiors. If the subordinate officers take the remarks or comments made by the superior officers in the discharge of

their official duties too personal and to their heart and resort to unnecessary litigation, it would not be congenial to the smooth functioning of the administration.

Now coming to the charges framed against the petitioner in the charge memo dated 22.05.2007, it is the contention of the petitioner that the Article-I of the charge memo dated 22.05.2007 constitutes subject-matter of charge memo dated 16.04.2007, and as such, the charge article of charge, could not have been framed against him once again. If the Article-I of the charge memo dated 22.05.2007 constitutes subject-matter of charge memo dated 16.04.2007, certainly the Enquiry Officer, at the time of enquiry would look into the same, and take a decision thereon. At any rate, based on assertions and counter-assertions, it cannot be said that whether Article-I of the charge memo dated 22.05.2007 already constitutes a charge in the charge memo dated 16.04.2007.

The petitioner states that the Article-II in the charge memo dated 22.05.2007, relating to theft of documents, has been framed against him after lapse of 40 days with a view to implicate him false case. It is his further case that on 17.04.2007, upon he having been placed under suspension, had handed over the entire records to the officer concerned, and as such, he cannot be said to have committed theft of the documents. The respondents, though admitted that the petitioner had handed over the record, but contended that he had not handed over the entire record, and had removed some vital documents numbering 705, and he was caught red-handed by the security personnel while he was moving them out in his car, under a panchanama, and since carrying any papers, books, drawing, etc from outside the office/project, except with the approval of the competent authority, constitutes misconduct under Rule 20.1 of the PCDA Rules, a charge in that regard was framed against the petitioner. He submitted that even the seizure was made under a panchanama, a copy of which is filed, and in fact, the petitioner has himself admitted that in his letter dated 20.04.2007. As can be seen from the letter dated 20.04.2007, the petitioner stated that he was taking some papers, circulars which are required for preparation/submission of written statement of defence to disciplinary authority, but whether the said documents, which the petitioner sought to take, formed part of the record or whether he had handed over the entire record to the respondents while handing over the charge upon being placed under suspension, and whether the panchanama, is a valid panchanama, is a matter of enquiry, and unless and until enquiry takes place, it cannot be

said that whether the charge of theft framed against the petitioner, is false or not.

Be that as it may, whether the aforesaid acts alleged against the petitioner constitute misconduct under the various PCDA Rules or not, is the subject-matter of enquiry before the Enquiry Officer, and it would not be proper for this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, to deal with the said issues raised in this writ petition, and record its findings basing on the assertions and counter-assertions, for if any such findings are recorded by this Court, then it would not only frustrate the enquiry proceedings, but would have an adverse impact on the parties to the enquiry.

Even though, the petitioner sought in W.P. No. 13958 of 2007, prayed that the 2nd respondent-Chairman and Managing Director be directed to appoint any other disciplinary authority in the place of 1st respondent-Executive Director, he had given up the said prayer, and he even had no objection to one Sri Inder Singh being appointed as Enquiry Officer, to enquire into the charges leveled against him.

For the foregoing reasons, I find no merit in the writ petitions, and the same are accordingly dismissed. The respondents shall expedite the enquiry. The respondents shall not take this order to have expressed any opinion on the charges framed against the petitioner, which are subject-matter of enquiry. They shall conduct the enquiry on the basis of the material available before them, and pass appropriate orders on its own merits. No costs.

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N.V. RAMANA, J.

Dated: 30th October, 2007

Note:

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(B/o)
KSR

[1] AIR 2001 SC 343

[2] 2005 (4) SLR 754

[3] (2007) 2 SCC (L & S) 304

[4] (1996) 1 SCC 327 = JT (1995) 8 SC 331

[5] (2004) 3 SCC 440 = 2004 SCC (Cri) 826 = AIR 2004 SC 1467

[6] (2001) 10 SCC 639

[7] (1987) 2 SCC 179 = (1987) 3 ATC 319 = AIR 1987 SC 943